IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 3849 OF 1994

UNNATI EDUCATION SOCIETY
THROUGH ITS PRESIDENT HAVING
ITS OFFICE AT PETH ROAD,
PANCHAVATI,NASHIK ... PETITIONER.

VS.

1. SAU. MANGALA MADHUKAR
MALPURE, AGE 34 OCCU. NIL,
RESIDING AT SARASWATI
SADAN, MALEGAON,
MOTOR STAND, PANCHAVATI,
NASHIK.

2. THE PRESIDING OFFICER,
MAHARASHTRA STATE SCHOOL
TRIBUNAL AT BOMBAY,
NASHIK. ... RESPONDENTS.

MR. PRASAD. S. DANI FOR THE PETITIONER.

MR. K.A.BNHATIA FOR RESPONDENT NO.1.

CORAM : A.P. DESHPANDE, J.

DATE : January 16, 2007.

JUDGMENT

1. This Petition is filed by the school management and the challenge is to the Judgment and Order passed by the School Tribunal. The School Tribunal has allowed the Appeal filed by the Respondent No.1. The respondent came to be terminated from service by the Petitioner, by an Order of termination, dated 27th April, 1992. The Respondent NO.1 was appointed as an assistant teacher in primary school in the year 1984, pursuant to the appointment Order, dated 10.11.1984. At the time of initial appointment, the Respondent NO.1 was an untrained teacher and continued to remain untrained till the date of his termination..

2. Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, cast an obligation on the management of the private schools to fill in the permanent vacancy by appointment of a person duly qualified to fill such vacancy of assistant teacher. Rule 6 of the Act, lays down that for an appointment of teaching and non-teaching staff in primary school, he should possess

minimum qualification, as laid down in Schedule "B" and Schedule "B", in turn, provides for appointment of a primary school teacher, who must possess education so also training qualification i.e. diploma in education. Admittedly, till date, the respondent No.1 has not acquired the prescribed Teaching/ Training qualification.

3. Perusal of the Order of the School Tribunal reveals that the Tribunal concluded in favour of the Respondent NO.1 by holding that the post in question was a permanent and the vacancy was clear. The Tribunal further found that the period for acquiring the training qualification was extended from time to time, till the year 1994-95. As stated , till date the respondent No.1 has not acquired the training qualification of D.Ed. In law, an untrained teacher cannot have right qua the post and a person who is not eligible for being appointed cannot claim any right to continue in the post. The petitioner is lacking the eligibility qualification, as laid down in Schedule "B" and, hence, the Respondent No.1 could not have successfully canvassed her claim for quashing the Order of termination before the Tribunal, as the respondent NO.1 was untrained teacher. It was open for the management to have terminated her services. No fault

can be found with the termination Order, in view of the status of the Respondent NO.1 being that of untrained teacher.

4. The Tribunal has committed a patent illegality in directing reinstatement of an untrained teacher. If persons who are not eligible to be appointed are reinstated, the same is bound to adversely affect the education of the pupils partaking the education in such schools. Granting reinstatement to a candidate who is not eligible to hold the post, would be wholly illegal. As the judgment and Order of the Tribunal suffers from patent illegality, the same deserves to be quashed and set aside.

In this view of the matter, the Writ Petition is allowed.

The Impugned Order passed by the Tribunal, dated 13.4.1994 in Appeal No. 22 of 1992, is hereby quashed and set aside.

Rule is made absolute in above germs with no Order as to costs.

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[A.P.DESHPANDE, J.]

GR JD.No.4/98 dtd.3.7.76 Spl.HCASDD 28

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLAGE SIDE

WRIT PETITION NO. 3849 OF 1994

DATE OF DECISION : January 16, 2007

For approval and signature :

The Hon'ble Mr. Justice A.P.Deshpande :

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to

the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Goa & Aurangabad Office?

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